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BEFORE THE

ILLINOIS COMMERCE COMMISSION

IN THE MATTER OF:

ELGIN, JOLIET AND EASTERN
RAILWAY COMPANY,

Petitioner,

V.

THE COUNTY OF COOK, ILLINOIS,
AND THE VILLAGE OF HOFFMAN
ESTATES,

Respondents

Petition of the Elgin, Joliet and Eastern Railway seeking an order of the Illinois Commerce Commission directing that an additional track and grade crossing be constructed at Shoe Factory Road (DOT 260525J) on the Elgin, Joliet and Eastern Railway Company in or near the Village of Hoffman Estates and unincorporated Hanover Township, Cook County, Illinois

Chicago, Illinois

April 7, 2011

Met, pursuant to adjournment, at

2 o'clock p.m.

1 BEFORE:

2 MR. JIM DUGGAN,
3 Administrative Law Judge

4

APPEARANCES:

5

6 FLETCHER & SIPPEL, LLC., by
7 MR. JEREMY BERMAN
8 29 North Wacker Drive, Suite 920
9 Chicago, Illinois 60606
10 appearing for EJ&E

11

12 MS. JENNIFER ANDERSON
13 160 North La Salle Street
14 Chicago, Illinois
15 appearing for staff
16 of the Illinois Commerce Commission

17

18 MR. DANIEL POWERS
19 527 East Capitol Avenue
20 Springfield, Illinois 62701
21 appearing for staff of the
22 Illinois Commerce Commission

23

24 ARNSTEIN & LEHR, LLP., by
25 MR. ARTHUR JANURA
26 120 South Riverside Plaza
27 Chicago, Illinois 60606
28 appearing for Village of
29 Hoffman Estates

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1	I N D E X				
2	WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS EXMNR.
3					
4					
5	(NONE .)				
6					
7	E X H I B I T S				
8	VILLAGE	FOR IDENTIFICATION		IN EVIDENCE .	
9	No. 100		244		244
10	200				239
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1 JUDGE DUGGAN: Pursuant to the authority vested
2 in me by the State of Illinois and the Illinois
3 Commerce Commission, I call Docket T10-0038 for a
4 hearing.

5 And may I have appearances for the
6 record starting with the petitioner.

7 MR. BERMAN: Jeremy Berman. Can you hear me?

8 JUDGE DUGGAN: Yes.

9 MR. BERMAN: Jeremy Berman from Fletcher & Sippel
10 on behalf of the Elgin, Joliet and Eastern Railway
11 Company. Address is 29 North Wacker Drive, Suite
12 920, Chicago, Illinois, 60606. Phone number is
13 312-252-1500.

14 MR. JANURA: Arthur Janura, J-a-n-u-r-a, the law
15 firm of Arnstein & Lehr, on behalf of the Village of
16 Hoffman Estates, 120 South Riverside Plaza, Chicago,
17 Illinois, 60606; 312-876-7100.

18 JUDGE DUGGAN: Okay. Let's see. Office of
19 Transportation counsel.

20 MS. ANDERSON: Thank you, your Honor.

21 MS. ANDERSON: My name is Jennifer Anderson. I
22 am here representing the staff of the Illinois

1 Commerce Commission. My address is 160 North
2 La Salle Street, Chicago, Illinois, 60601. My phone
3 is 312-814-1934.

4 JUDGE DUGGAN: All right. Staff -- railroad
5 staff.

6 MR. POWERS: Daniel Powers, Illinois Commerce
7 Commission, 527 East Capitol Avenue, Springfield,
8 Illinois, 62701, and the phone is 847-516-0733.

9 JUDGE DUGGAN: Okay. Do we have anybody
10 representing County of Cook?

11 MR. JANURA: No, Judge.

12 JUDGE DUGGAN: Do you have anybody representing
13 Hanover Township?

14 MR. JANURA: Not here, Judge.

15 JUDGE DUGGAN: Thank you. Do we have anybody
16 representing Forest Preserve District?

17 MR. JANURA: Not here, judge.

18 JUDGE DUGGAN: Okay. Do we have any parties that
19 I did not call enter appearances?

20 (No verbal response.)

21 All right. Mr. Baker, are you
22 representing you could update us on the status?

1 MR. BAKER: Yes, sir. Subsequent to the period
2 of time that we took off from this particular
3 project between hearings, our counsel has met with
4 the counsel from Hoffman Estates and we have
5 agreements either in place or in principle for the
6 license agreement, for the construction, for the
7 easement, and for the potential four-week road
8 closure. We have that in the agreement
9 and maintenance going forward at this time, at least
10 on the west side from the tracks to the west side of
11 the right-of-way. And if we have any difficulty
12 with the forest preserve on the east side, I think
13 the village is prepared to take care of that
14 maintenance also. That's all I have, your Honor.

15 JUDGE DUGGAN: Mr. Janura, is that your
16 understanding?

17 MR. JANURA: Yes, sir, it is.

18 JUDGE DUGGAN: I have got housekeeping -- a few
19 housekeeping matters I noted just after going
20 through the record before. Staff had requested
21 flashing lights, I believe.

22 MR. POWER: Yes, your Honor.

1 JUDGE DUGGAN: And was that at the sidewalk?

2 MR. POWERS: That was for the roadway. That's

3 been resolved also.

4 JUDGE DUGGAN: As in an agreement for them?

5 MR. POWERS: Yes.

6 JUDGE DUGGAN: And who's going to pay to

7 maintain?

8 MR. POWERS: The CN will pay for the

9 installation, and maintenance will be the road

10 authority.

11 JUDGE DUGGAN: And is that -- what side is that

12 on?

13 MR. POWERS: Both sides.

14 JUDGE DUGGAN: So the road authority is whom?

15 MR. POWERS: Cook County highway.

16 JUDGE DUGGAN: Oh. And they have actually agreed

17 to that?

18 MR. POWERS: I don't have an agreement for that

19 portion of it yet. No, your Honor.

20 JUDGE DUGGAN: Are you anticipating that you

21 might?

22 MR. POWERS: Yes.

1 JUDGE DUGGAN: Can you clarify for me the
2 flashing lights. Are there not -- are they
3 different than your normal warning signals for the
4 crossing?

5 MR. POWERS: Yes. They're active 24/7 and just a
6 supplementary measure to the signs that they'll be
7 monitoring flashing yellow.

8 JUDGE DUGGAN: And that's -- that's because of
9 the additional track? It has nothing to do with the
10 pedestrian walk?

11 MR. POWERS: Right. Additional track, additional
12 train volumes.

13 JUDGE DUGGAN: Okay. So the standard would be
14 that the road authority would maintain those. Is
15 this on the railroad right-of-way?

16 MR. POWERS: I think it's in the -- it's in the
17 highway right-of-way, but it might be within -- it'S
18 in the highway easement I guess across the
19 railroad's right-of-way.

20 JUDGE DUGGAN: I guess -- is it within the
21 authority of the railroad to enter that premises and
22 maintain those?

1 MR. HEALY: Your Honor, this is Tom Healy, the
2 in-house attorney with the EJ&E. It's not generally
3 our practice to have agreements with road
4 authorities for every sign that they would post
5 within the road right-of-way that happens to be also
6 on the railroad right-of-way. So we would assume
7 that if the sign winds up within the railroad
8 right-of-way, so long as it's within the highway
9 right-of-way, they won't need an additional
10 agreement. Part of the easement for the
11 right-of-way for the road allows for the maintenance
12 of those signs.

13 JUDGE DUGGAN: So you don't have a designated
14 spot for this flashing light yet?

15 MR. HEALY: I guess we defer to the staff as to
16 the location.

17 MR. POWERS: It's based on field conditions
18 usually, whatever the METC minimum is or the
19 railroad minimum is away from the rail, 15 feet
20 usually, so it doesn't obstruct the railroad warning
21 devices. The signs are placed so they don't
22 obstruct the flashers on the railroad warning

1 devices.

2 JUDGE DUGGAN: I was talking about flashing
3 lights.

4 MR. HEALY: No, they won't. These are flashing
5 yellow lights that would be on signs that say do not
6 stop on tracks.

7 JUDGE DUGGAN: Okay.

8 MR. HEALY: In addition, the crossing will have
9 the flashing alternating red lights with gates, and
10 there will also be a set of gates, and I can't
11 remember if lights or not were included on that.

12 Ray, do you remember?

13 MR. BAKER: You wind up getting on the gate
14 arm -- you wind up getting flashing lights. And if
15 we need a separate pedestal for the active, it would
16 wind up having a flasher on it.

17 MR. HEALY: The pedestrian way, the pathway,
18 sidewalk, whatever we are going to call it, will
19 also have active warning devices on it to be funded
20 by the railroad.

21 JUDGE DUGGAN: Okay. So I think what I'm hearing
22 is that we can order Cook County to do that if

1 it's -- even though they didn't show up, they remain
2 a party. Is that what I'm hearing from you? Do you
3 think we can do that?

4 MR. POWERS: Yes.

5 JUDGE DUGGAN: And Cook County has authority on
6 both sides?

7 MR. POWERS: Yes.

8 MR. HEALY: Yes.

9 JUDGE DUGGAN: Okay. So let me clarify this
10 again. You are saying the pedestrian path, however,
11 would be in the forest preserve's jurisdiction.

12 MR. HEALY: No, your Honor. If I might, the
13 agreement we have in place is going to allow the
14 installation of this path on the 100-foot-wide
15 railroad right-of-way.

16 The discussions with the forest
17 preserve, which owns land northeast of the crossing,
18 had been relative to what was going to be worked out
19 to connect onto that path. But for purposes of this
20 hearing, your Honor, the jurisdiction for this
21 hearing will require the placement of a path within
22 the 100-foot railroad right-of-way.

1 JUDGE DUGGAN: All right. So I guess you guys
2 have got it worked out. I guess I'm fine with it.
3 I always was unsure if that location would simply
4 pour out on the shoulder of the road and there
5 wouldn't be a connection to the forest preserve
6 path, which is not necessarily bad. Cars (sic)
7 drive on shoulders all the time. I wasn't clear
8 about that.

9 MR. JANURA: Judge, Mike Hankey is here, who is
10 an engineer from the village, who actually knows
11 where that path connects on the east and west if you
12 would like to hear from him.

13 JUDGE DUGGAN: Well, he can tell me this. If you
14 build the pedestrian path through the railroad
15 right-of-way, then is there -- does that attach to
16 the path or not?

17 MR. HANKEY: There would be an additional path to
18 the east that would go into the forest preserve and
19 an additional section of paved path to the west that
20 would link into an existing path.

21 JUDGE DUGGAN: So --

22 MR. HANKEY: So there would be connections on

1 each side.

2 JUDGE DUGGAN: Because I remember there's a
3 barrier between the forest preserve -- the end of
4 the path forest preserve and the road. There was a,
5 you know, a corrugated barrier and I could never
6 figure out where you put this path.

7 MR. JANURA: The path would go north of that.

8 JUDGE DUGGAN: So there's room between the road
9 and the corrugated barrier?

10 MR. JANURA: No. I believe the path is going to
11 go to the north of the corrugated right-of-way.

12 MR. HANKEY: Right behind the barrier.

13 JUDGE DUGGAN: I got you.

14 MR. JANURA: So the barrier will be between the
15 path and the road.

16 JUDGE DUGGAN: I got you. Okay. And who's going
17 to construct that or pay for that?

18 MR. JANURA: Within the right-of-way, it will be
19 the railroad, and where the right-of-way ends to the
20 east the forest preserve district will put in
21 whatever connection that might have to be there, and
22 to the west the Village of Hoffman Estates will make

1 sure it connects.

2 JUDGE DUGGAN: So, again, to the east you say we
3 are going to put that in, meaning the Village of
4 Hoffman Estates?

5 MR. JANURA: No. To the east of -- the forest
6 preserve district should be doing that, because
7 that's on forest preserve district property.

8 JUDGE DUGGAN: Between the railroad
9 right-of-way --

10 MR. JANURA: The east portion of the railroad
11 right-of-way north of Shoe Factory Road. That
12 corner up there, the north/east area corner, is
13 forest preserve.

14 And if you remember, they had kind of
15 like that unpaved path that went up to that corner
16 and the forest preserve will just put down some
17 stone and whatever else it is they need. Ultimately
18 that's all going to be paved as part of a grant
19 coming out, but, in the interim, they'll just put in
20 some other path material.

21 MR. HANKEY: Yes, we would -- it's really kind of
22 a division-of-cost question. Perhaps the

1 construction of an asphalt path would go starting on
2 the west where the current existing path ends. It
3 would extend up to the railroad right-of-way. The
4 village would be responsible for that cost.

5 The space within the railroad
6 right-of-way would be the responsibility of CN, and
7 then to the east of that there's a short section of
8 path -- asphalt path to be paved that would be
9 forest preserve, so that the goal is to build all of
10 that but to divvy the cost or distribute the cost
11 among the three agencies.

12 JUDGE DUGGAN: Okay. I'm asking only about one
13 stretch, and that is between the east limit of the
14 railroad right-of-way and the path that you intended
15 would be north of the barrier up to the point where
16 the preserve path ends. Now who has jurisdiction of
17 that property?

18 MR. HANKEY: That's the forest preserve.

19 JUDGE DUGGAN: So the forest preserve is all the
20 way up to the east end of the railroad right-of-way?

21 MR. HANKEY: Yes, sir.

22 JUDGE DUGGAN: Okay. All right. And you talked

1 to them and they agreed they're going to do
2 something?

3 MR. HANKEY: We don't have that finalized yet,
4 but they seem to be in agreement, yes. Okay. But
5 then still there is a question of who's going to
6 maintain it somehow.

7 MR. JANURA: The village in the agreement is
8 willing to maintain the path through the --

9 JUDGE DUGGAN: Excuse me. Let me be very
10 specific. I'm talking about the section that I just
11 discussed.

12 MR. HEALY: Off the railroad right-of-way to the
13 east?

14 JUDGE DUGGAN: Between that and the forest
15 preserve path, which ends -- which Mr. Hankey says
16 is forest preserve jurisdiction, who's going to
17 maintain that?

18 MR. JANURA: That would be forest preserve.

19 JUDGE DUGGAN: Okay. Then what did I
20 misunderstand about Mr. Baker's presentation when I
21 thought he said the Village of Hoffman Estates would
22 maintain the west end and they weren't sure about

1 the east? Did I misunderstand you, Mr. Baker?

2 MR. BAKER: No. Hoffman Estates is going to
3 maintain the pathway outside of the railroad
4 right-of-way to the west and Hoffman Estates has
5 indicated that they would assist, if necessary, the
6 Cook County Forest Preserve for the section outside
7 of the railroad right-of-way to the west. And
8 Mr. Hankey said --

9 MR. HANKEY: To the east.

10 MR. BAKER: -- to the east.

11 And Mr. Hankey said that he believes
12 the Cook County Forest Preserve has a grant coming
13 that would cause the improvement of that at some
14 future date.

15 JUDGE DUGGAN: Well, I guess maybe that's not
16 even for me to address. I'm only addressing the
17 right-of-way anyway.

18 MR. HEALY: Your Honor, this is Tom Healy. I
19 appreciate your recognition of that, because I was
20 trying to find a way to politely suggest that, yes.

21 JUDGE DUGGAN: But, on the other hand, I mean, I
22 didn't, you know --

1 MR. HEALY: It's not inappropriate certainly to
2 inquire into it to make sure you understand fully
3 the project and the responsibilities. In terms of
4 the order that will be entered, I think the order
5 probably limits itself to what will happen within
6 the railroad right-of-way.

7 JUDGE DUGGAN: I mean, I do think that it's
8 certainly an issue as to if you are feeding bicycle
9 traffic or pedestrians onto a highway. That's what
10 my main concern. You told me the path's going to
11 run to the north.

12 MR. JANURA: Under the design, that will not
13 happen. That's what's happening right now, but that
14 will not happen with this improvement.

15 JUDGE DUGGAN: Okay. So is there anything
16 undecided since we don't have to address -- since my
17 order doesn't have to address the maintenance of the
18 east portion of that path?

19 MR. JANURA: The only thing is that -- and we are
20 working it out -- the village will be maintaining
21 the surface of the path, the maintenance of the
22 gates. Even the pedestrian gates I think is the

1 railroad.

2 MR. HEALY: Yes. We have accepted that.

3 JUDGE DUGGAN: And, again, Cook County will send
4 an order telling them they're in charge for
5 maintenance of the flashing light? Help me a little
6 bit. I'm confused.

7 MR. JANURA: That's highway. Cook County is two
8 things, Judge. Don't forget the Forest Preserve
9 District is different than Cook County.

10 MR. HEALY: Highway Department, right.

11 JUDGE DUGGAN: I'm talking about the flashing
12 lights.

13 MR. JANURA: The flashing lights I believe is the
14 Cook County Highway Department.

15 MR. BAKER: The flashing lights -- Judge, this is
16 Ray Baker. The flashing lights that protect the
17 train movements are maintained at the cost of the
18 railway company.

19 The flashing lights that are going to
20 be installed on behalf of the pedway, I think
21 Mr. Healy indicated that cost will be paid for by
22 the railway company.

1 The advanced warning signs with the "do
2 not stop on tracks" strobe light will be installed
3 by the railroad, and that will become the
4 maintenance of the Cook County Highway Department.

5 The railway maintains the surfacing
6 through the railroad crossing, and the Village of
7 Hoffman Estates will maintain the path within the
8 railroad right-of-way.

9 JUDGE DUGGAN: Okay. That's helpful when you
10 divide the flashing lights into the three different
11 categories, because, otherwise, we are not so clear
12 about that.

13 MR. BAKER: I agree.

14 JUDGE DUGGAN: What's that?

15 MR. BAKER: I agree.

16 JUDGE DUGGAN: Okay. So back to whether there's
17 anything that needs to be in the order, that's not
18 decided?

19 MR. POWERS: Not that I'm aware of.

20 JUDGE DUGGAN: Okay. Well then, are you looking
21 forward then to drafting an order -- an agreed order
22 or what?

1 MR. POWERS: Yes.

2 MR. BAKER: Yes.

3 JUDGE DUGGAN: Now here's been my concern with
4 agreed orders. And frankly, Jeremy, I have been
5 working on that 113 case, and part of the problem I
6 have is that I get letters submitted from highway
7 authorities stating that they agree to the proposed
8 order, but I have no documented record of what order
9 they read, so I would appreciate getting those
10 letters.

11 Here's what I would prefer. So that I
12 have a documented record of what actually does
13 constitute a stipulation, because either I have got
14 to have everything, every bit in evidence in the
15 record here through testimony, or I can do these
16 things by stipulation.

17 Those stipulations have to include all
18 the parties, which becomes a party, because Cook
19 County is not here to stipulate. So I have to do a
20 proposed order in any event, but at least if I
21 know -- let me think here.

22 Dan, we have Hanover Township and the

1 forest preserve that are parties.

2 MR. HEALY: Your Honor, I don't think you'll be
3 affecting their interests with the order.

4 JUDGE DUGGAN: Well, that's true. Then I have to
5 dismiss them.

6 MR. HEALY: They were named when there were open
7 issues about the path so that they would be a party
8 with a chance to participate, but since we've worked
9 out with the village all of the issues relative to
10 the construction and maintenance of the path --

11 JUDGE DUGGAN: All right. Well, why don't
12 somebody move to dismiss those two then. I think
13 Mr. Berman --

14 MR. BERMAN: Yes. The petitioner would move to
15 dismiss Hanover Township and the Cook County Forest
16 Preserve as parties. We move to add them as parties
17 when there were open issues that may have affected
18 their interests, and those issues have been
19 resolved.

20 JUDGE DUGGAN: Okay. Any objection,
21 Ms. Anderson?

22 MS. ANDERSON: No, your Honor.

1 JUDGE DUGGAN: Any objection, Mr. Janura?

2 MR. JANURA: No, your Honor.

3 JUDGE DUGGAN: Any objection, Mr. Powers?

4 MR. POWERS: No, your Honor.

5 JUDGE DUGGAN: Okay. Then based upon the
6 representations made, the fact there are no
7 objections, motion to dismiss Hanover Township and
8 the Forest Preserve District is granted.

9 We have still got the issue of Cook
10 County. And, frankly, I mean, the other solution is
11 to get the agreed order, have a hearing, come in and
12 get it on the record, since Cook County's probably
13 not going to stipulate, to basically submit the
14 facts in the record by stipulation at a hearing.

15 Does anybody have a real problem with
16 that?

17 MR. HEALY: Can we go off the record for a
18 minute, Judge.

19 JUDGE DUGGAN: Yes. Let's go off.

20 (Off the record.)

21 Back on the record here.

22 Okay. As I say, I have a couple

1 housekeeping matters. But I was asking -- it
2 appears to me the parties believe they can work out
3 an agreed order for all the matters involved that
4 have to do with Commission jurisdiction and that
5 that's what they hope to do and that they will then
6 submit that along with a file on e-docket followed
7 by concurrences of all of the parties and Commission
8 staff stating their concurrence to the facts and
9 findings as stated in the agreed order as
10 identified.

11 Is that a fair representation there,
12 Mr. Berman?

13 MR. BERMAN: I believe it is, your Honor.

14 JUDGE DUGGAN: Okay. Mr. Janura?

15 MR. JANURA: Yes, sir.

16 JUDGE DUGGAN: Okay. Ms. Anderson?

17 MS. ANDERSON: Yes, your Honor.

18 JUDGE DUGGAN: Mr. Powers?

19 MR. POWERS: Yes, your Honor.

20 JUDGE DUGGAN: Okay. That being the case, then I
21 have this to do. I don't think I actually
22 admitted -- I didn't actually say certain exhibits

1 admitted, so -- but they were certainly identified
2 and moved and no objection to 200, 201, 202. So
3 200, 201 and 202 are certainly admitted if they
4 weren't before.

5 (Whereupon, Village
6 Exhibit Nos. 200 thru 202
7 were received in
8 evidence.)

9 I have a note here that I need to
10 determine who's the proper road authority to pay for
11 advanced markings. So are there advanced markings
12 indicated here?

13 MR. POWERS: Not on any of the plan sheets, but
14 there probably will be a joint filing of a
15 petitioner and staff exhibit showing the markings
16 that would be attached to the proposed agreed order.

17 JUDGE DUGGAN: Okay. So, yes, it would have to
18 be there. So, in fact, once again, everybody's
19 agreeing to the same thing, including that.

20 MR. POWERS: Right.

21 JUDGE DUGGAN: Okay. And then you'll determine
22 who the proper authority -- road authority is to --

1 again, would that be Cook County?

2 MR. POWERS: Yes.

3 JUDGE DUGGAN: So Cook County can pay for the
4 flashing advanced signals and the advanced markings.

5 MR. BAKER: They are not going to pay for it,
6 Judge. They'll be required to do the future
7 maintenance to those items.

8 JUDGE DUGGAN: Right. Thank you. And, once
9 again -- now there was a reference made to CN and
10 that's another thing I have got to get clear here
11 on the record.

12 The petition's in the name Elgin,
13 Joliet and Eastern Railway Company.

14 MR. HEALY: That's correct.

15 JUDGE DUGGAN: Go ahead.

16 MR. HEALY: Elgin, Joliet and Eastern Railway
17 Company is the owner of the rail line. It is
18 responsible for the operation of trains. It is
19 owned by Canadian National Railway Company.
20 Canadian National Railway Company is not the owner
21 of the property. We operate all of the railroads.
22 The parent company, Canadian National Railway

1 Company, and all of the subs collectively under the
2 trade name of CN. So on occasion people will refer
3 to us, including myself, will refer to us as CN, but
4 that's just a trade name designating the parent and
5 all of the subsidiary railroads. So the proper
6 party in this docket is Elgin, Joliet and Eastern
7 Railway Company.

8 JUDGE DUGGAN: For the most part, any references
9 to CN in the transcript were properly meant to be
10 EJ&E for purposes of this hearing; is that right?

11 MR. HEALY: I strongly suspect that that's the
12 case, yes.

13 JUDGE DUGGAN: Okay. Close. So, I mean, I guess
14 take care of that when you do draft the order that
15 EJ&E is the proper party.

16 Now this was the docket also where
17 there was some discussion about the proper hash
18 marks at crossings. Is that right, Mr. Baker?

19 MR. BAKER: Yes, sir.

20 JUDGE DUGGAN: Okay. Did you get that worked
21 out, Mr. Powers?

22 MR. POWERS: Yes, your Honor.

1 JUDGE DUGGAN: Okay. So --

2 MR. BERMAN: I believe the exhibit Mr. Powers

3 referenced earlier also shows the cross hashing that

4 staff will request.

5 JUDGE DUGGAN: You mean what you are going to

6 submit as an agreed exhibit?

7 MR. POWERS: Yes, your Honor.

8 JUDGE DUGGAN: Okay. I have two other questions

9 that could be done off the record. Let me go ahead

10 and do this. There was a -- do you have a list of

11 your exhibits, Mr. Berman?

12 MR. BERMAN: I'm not sure if I have a compiled

13 list.

14 JUDGE DUGGAN: Okay.

15 MR. BERMAN: I do have the exhibits. I hope you

16 have a question about one.

17 JUDGE DUGGAN: Well, actually it's this one.

18 It's actually the Village Exhibit 100, the traffic

19 study. I don't see that. I found the original. I

20 don't know where it went. Do you remember did you

21 e-file that?

22 MR. JANURA: What we e-filed I'm sure -- well, I

1 think we e-filed everything, Judge. Mike Hankey
2 conducted that study. He's checking his file right
3 now to see if we have the original.

4 JUDGE DUGGAN: If he's got the original there,
5 what we can do is mark that and so that the worse
6 happens we have two of them -- two originals.

7 MR. JANURA: When I get back to the office, I
8 will have my secretary who e-filed the other
9 documents go through and even do it a second time
10 just to make sure. Wait. We have it here.

11 JUDGE DUGGAN: Yes. Let's go ahead and have the
12 court reporter mark that as the Village 100. Yes.

13 MR. HANKEY: This was actually submitted by
14 Mr. Veracrucysse on our behalf when we were having
15 difficulty getting the e-docket filing to work.

16 JUDGE DUGGAN: Oh, that's okay. As far as the
17 proponent of the exhibit is the village.

18 MR. JANURA: Right now we are filing the original
19 here.

20 JUDGE DUGGAN: Well, I'm just going to ask her to
21 send me the hard copy down. As you said, you
22 already got it. It doesn't need to be filed -- I

1 mean, filed ahead of time. That should stay open.

2 Just tell me when the court reporter is done marking
3 it Village 100.

4 (Whereupon, Village
5 Exhibit No. 100 was
6 marked for
7 identification.)

8 All right. That's already been offered
9 into evidence and entered over Mr. Berman's
10 objection. And so, just for the record, this
11 document that's just been marked will be admitted as
12 Village Exhibit 100 since I am not sure if we ever
13 kept the original in the record the last time.

14 (Whereupon, Village
15 Exhibit 100 was
16 received in evidence.)

17 Okay. I believe that's all I have.

18 Does anybody else have anything else? Go ahead.

19 MR. JANURA: Not for me, your Honor.

20 JUDGE DUGGAN: Thank you. How much time do you
21 think you need?

22 MR. HEALY: We will still have to read his draft

1 order and come in and sign off on it.

2 MR. JANURA: You e-mail to us and just stop by
3 your office or something?

4 MR. HEALY: No, e-mail comments if it's okay.
5 Good. What the judge is indicating -- we are still
6 on the record. What the judge has indicated is
7 Jeremy will e-file it after Dan's looked at it and
8 sign off, and you've looked at it and probably sent
9 it to the County. He will e-file it and then each
10 party will in turn file something into the docket
11 saying I read the draft stipulated order submitted
12 by Berman this date on behalf of the village.

13 MR. JANURA: We just reference by way of draft
14 dated such and such.

15 MR. HEALY: Yes, submitted by Mr. Berman or filed
16 on X-date, then we are okay with it, but he won't
17 put that in for filing until we get signed off from
18 Dan and you and we will see what we can get from the
19 county.

20 JUDGE DUGGAN: Yes. If you could get that from
21 the County, then I think I can avoid the next
22 hearing. If we don't get a stipulation from them,

1 then I think I've got to put it in evidence by
2 hearing. So, again, that's what I'm asking is how
3 far out to set this hearing.

4 MR. BAKER: Two weeks?

5 MR. BERMAN: Does that give us enough time?

6 MR. BAKER: What do you need, Dan? A month?

7 MR. POWERS: That's just being realistic.

8 MR. BAKER: I'm just asking.

9 MR. POWERS: I'm thinking of the County.

10 MR. BAKER: The County will be simple. They'll
11 either agree --

12 MR. HEALY: We are going to need you to work the
13 County angle, Rick, because you have got nothing
14 else to do.

15 MR. BAKER: Yes. Then we'll go a month.

16 MR. HEALY: Four weeks, your Honor.

17 JUDGE DUGGAN: All right. That's around May 10.
18 Well, like I say, I have got to check my calendar
19 and all that stuff, but I'm pretty sure May the
20 18th that I could fit it in. If anybody know they
21 have a bad day during that time or on vacation
22 during that time, let me know.

1 MR. JANURA: Judge, do you think the village
2 would have to be here if we signed off on our
3 agreement or do you want us here or how does that
4 work?

5 JUDGE DUGGAN: It would be easier if you would.

6 MR. JANURA: Okay.

7 JUDGE DUGGAN: Like I said, I have got to put it
8 in evidence in the hearing according to the statute
9 and it's kind of hard to have a hearing if nobody's
10 here.

11 MR. JANURA: No. No. No. That's fine. I just
12 wanted to find out.

13 JUDGE DUGGAN: Yes. That would be good. It's
14 possible Mr. Baker wouldn't have to show up so long
15 as the attorneys could stipulate --

16 MR. BAKER: Thank you.

17 JUDGE DUGGAN: -- on behalf of EJ&E that this is
18 what the evidence will be as presented and all
19 parties called to testify. So all right. Good
20 deal. Then we'll be continued to a date in which we

21

22

1 will send notice. Okay. Thank you.

2 (Whereupon, the above
3 matter was adjourned
4 sine die.)

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